

THE “VOLUNTARY SEAFOOD INSPECTION PERFORMANCE BASED ORGANIZATION ACT OF 1999”

Section-by-Section Summary With Commentary

NOTE: Except as otherwise specified, statutory references are to provisions of the Federal Food, Drug, and Cosmetic Act (FDC Act).

COMMENTARY: This bill transfers to a new performance based organization (PBO) located in the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS) the personnel, functions, and authorities of the Seafood Inspection Program of the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. The PBO will be a discrete unit of FDA that commits to clear management objectives, measurable goals, customer service standards, and specific targets for improved performance. This unit will operate under the guidance and direction of the FDA Commissioner. It will remain subject to government-wide regulations, rules, policies, and procedures, unless specific waivers are granted. The PBO focuses on programmatic operations, not policy-making functions.

The PBO will have a Chief Operating Officer (COO) and greater managerial flexibilities in personnel, procurement and other specified areas which will enable the PBO to improve organizational performance. The COO will be selected from a pool of highly qualified and experienced managers from either the private or public sector and serve for a fixed term. The COO will sign an annual performance agreement with the HHS Secretary and be accountable for meeting the organization’s performance improvement goals.

SEC. 1. SHORT TITLE.

This section provides that the bill, when enacted, will be cited as the “Voluntary Seafood Inspection Performance Based Organization Act of 1999”.

SEC. 2. FINDINGS.

This section declares Congressional findings that—

- (1) the requirements of safety and wholesomeness established by the Food and Drug Administration (FDA) are the minimum levels to which seafood in commerce in the United States must conform;
- (2) the seafood industry benefits from the fee-for-service voluntary inspection and certification program of the National Oceanic and Atmospheric Administration (NOAA)

of the Department of Commerce under the Agricultural Marketing Act of 1946 (AMA of 1946);

(3) the official marks of approval under the voluntary inspection program benefit the public by providing governmental confirmation that the seafood receiving such marks has been processed under conditions designed to ensure safety, wholesomeness, proper labeling, and quality;

(4) increased seafood industry participation in the voluntary inspection program and increased consumer understanding of the official marks will increase program benefits to the public;

(5) recent requirements imposed by FDA and foreign governmental agencies are likely to increase demand for inspection, certification, and other services under the AMA of 1946;

(6) greater administrative flexibility will enable the voluntary inspection program to increase efficiency and cost-effectiveness in providing benefits to the seafood industry and the public; and

(7) transfer of the voluntary inspection program to a performance based organization (PBO) in the FDA will locate all federal authority for seafood inspections and related activities in a single agency and will promote economy and consistency.

COMMENTARY: NOAA's voluntary seafood inspection program provides significant assurances of safety, wholesomeness and proper labeling to the public that bolster and expand public confidence generated by the activities of the Food and Drug Administration. Greater administrative flexibility would enable the PBO established by this legislation to provide better services to both the seafood industry and the public. Including the PBO within FDA will promote the efficiency and effectiveness of both the PBO and FDA. In particular, closer coordination of inspectional activities conducted by the PBO and other FDA components will build on the ongoing relationship between FDA and the NOAA fee-for-service inspection program that have coordinated and cooperated in areas of mutual interest for many years.

SEC. 3. ESTABLISHMENT OF A PERFORMANCE-BASED ORGANIZATION FOR VOLUNTARY SEAFOOD INSPECTIONS.

Section 3(a) amends chapter IV of the Federal Food, Drug, and Cosmetic Act by adding a new subchapter B, entitled “**SEAFOOD—VOLUNTARY INSPECTIONS AND OTHER ACTIVITIES**” with the following provisions:

SEC. 431. DEFINITIONS.

Section 431 defines terms used in the subchapter.

(1) The term “COO” means the Chief Operating Officer of the PBO appointed under section 435.

(2) References to a “mandatory” program refer to inspections authorized under section 702 of the FDC Act.

(3) References to a “voluntary” program are to the inspection and other fee-for-service activities under section 203(h) of the Agricultural Marketing Act (AMA) of 1946;.

(4) The term “seafood” is defined.

SEC. 432. ESTABLISHMENT OF PBO; FUNCTIONS.

PBO.

Subsection (a) establishes in FDA, under the direction of the Commissioner, a PBO for seafood inspection, which shall be the successor to the Seafood Inspection Program of the National Marine Fisheries Service (NMFS) of NOAA in the Department of Commerce, and which is authorized to carry out activities specified in this section, in accordance with section 433 other provisions of the FDC Act, and other laws administered by the Commissioner.

VOLUNTARY INSPECTION, CERTIFICATION, AND GRADING OF SEAFOOD.

Subsection (b) provides that the PBO will carry out the seafood inspection, certification, identification, grading, and other services specified in section 203(h) of the AMA of 1946, upon request and on a fee-for-service basis.

INSPECTIONS UNDER SECS. 702 AND 706 OF THE FDC ACT.

Subsection (c) provides that the COO may enter into an agreement with the Commissioner under which qualified PBO staff will perform some or all of the mandatory inspections of seafood establishments under section 702 of the FDC Act, or seafood inspections authorized by regulations issued under section 361 of the Public Health Service Act (PHS Act). This subsection also authorizes the PBO to carry out any or all of a program under section 706, should one be established. (Section 706 authorizes FDA to conduct fee-for-service seafood inspections.) The amount of reimbursement for inspections under section 702 or section 361 negotiated by the Commissioner and the

COO will not be less than the amount sufficient to reimburse the additional costs incurred by the PBO as a result of performing these inspections.

COMMENTARY: PBO employees conducting section 702 inspections under this subsection will function as FDA inspectors, with the same authority and responsibilities as other FDA employees performing this function. While the COO is not required to enter into an arrangement under this subsection, refusal to do so should be based on sound business principles such as the inability of the PBO to fulfill a contractual obligation to a third party. This section does not affect the underlying authority of FDA with respect to these inspections.

No fees will be charged to seafood establishments for section 702 inspections that are performed by PBO employees. Instead, FDA will reimburse the PBO at a rate at least sufficient to cover the additional cost to the PBO of performing such inspections. The rate of reimbursement will be negotiated by the COO and the Commissioner. The bill provides the flexibility for FDA and the PBO to work out their own arrangements based upon the availability of funding, the time available to PBO inspectors, and similar factors.

This subsection also authorizes the PBO to carry out the inspection program under section 706 of the FDC Act, which authorizes FDA, upon request and payment of fees, to inspect packers of seafood and issue a mark on such seafood to show compliance with the provisions of the FDC Act. As the PBO will not receive appropriations for section 706 activities, it is expected that fees charged by the PBO for such inspections would be sufficient to cover its costs.

OTHER ACTIVITIES RELATING TO SEAFOOD.

Subsection (d)(1) authorizes the PBO, subject to the conditions specified under subsection (d)(2), to carry out—

(1) activities relating to seafood under the AMA of 1946 (other than those specified in subsection (b));

(2) such functions under the FDC Act or the PHS Act as may be delegated by the Commissioner with the concurrence of the COO; and

(3) other actions for the benefit of the seafood or fishing industry or of consumers of seafood.

Activities authorized under subsection (d)(1) include the development of international seafood standards and good manufacturing practices through participation in international activities, such as those of the Codex Alimentarius.

Subsection (d)(2) restricts the sources of funding for PBO activities authorized under this subsection to fees collected from persons benefitting from the activity,

amounts specifically appropriated for use by the PBO, and, in the case of delegated FDA functions or other activities which the COO agrees to perform upon the request of the Commissioner, amounts appropriated for use by the Secretary.

COMMENTARY: No FDA appropriations other than those specifically listed in subsection (d)(2) of this Act may be used to pay the costs of activities specified in subsection (d)(1). The PBO will need to generate revenues sufficient to ensure that expenses are recovered for those activities not funded through appropriations. It is intended that the costs of the PBO's activities undertaken pursuant to the Agricultural Marketing Act which directly benefit specific persons or entities are to be recovered through fees. This principle, however, would not preclude discount pricing or other pricing policies to preserve the PBO's economic viability. Consistent with this principle, the costs of newly established or modified services offered by the PBO need not be fully recovered.

SEC. 433. GENERAL POWERS AND REQUIREMENTS.

POLICY DIRECTION.

Subsection (a)—

(1) provides that all activities of the PBO will be conducted at the direction of the COO, subject to the oversight and direction of the Commissioner;

(2) provides that, except as provided in the FDC Act, the Secretary's authorization is not required for performance of PBO functions;

(3) requires that to the maximum extent feasible, PBO functions and standards be consistent and coordinated with, and not duplicate, those of other FDA components, and that voluntary seafood inspections by the PBO under the AMA of 1946 be designed to minimize the need for additional inspections under the FDC Act; and

(4) requires the COO to ensure that PBO employees receive training meeting standards satisfactory to the Commissioner.

COMMENTARY: The COO will direct the day-to-day operations of the PBO. However, all activities are subject to the Commissioner's review and approval to ensure consistency and to maximize coordination with, and avoid duplication of, functions of other FDA components.

It is expected that the PBO inspectors would obtain training from FDA, but other training sources that are acceptable to the Commissioner may also be used.

REGULATIONS.

Subsection (b) authorizes the Secretary to promulgate regulations under the FDC Act and the AMA of 1946 as necessary for the performance of the functions of the PBO.

COMMENTARY: The PBO will develop, for the Secretary, regulations governing its daily operations. Regulations developed by the PBO are subject to review and approval by the Commissioner.

OFFICIAL SYMBOLS; TRADEMARKS.

Subsection (c) authorizes the PBO, with the approval of the Commissioner, to use official marks in connection with seafood packaging, containers, or labels as a certification of compliance with applicable requirements (but prohibits affixing such marks to packages or containers in a foreign country or on any foreign flag vessel). This subsection also permits the PBO to register trademarks and service marks.

COMMENTARY: The limitation on affixing marks in foreign territory converts the current NMFS policy for the fee-based inspection program into a statutory limitation on the powers of the PBO. However, other activities currently carried out in other countries may continue-- such as training-type activities -- that provide benefits to domestic importers, processors, and consumers.

CONTRACTS, COOPERATIVE AGREEMENTS, AND SPECIAL STUDIES.

Subsection (d) authorizes the PBO, as necessary to carry out its functions, to enter into contracts or cooperative agreements (including for the purchase, sale, or rental of real and personal property), with Federal, state, and local government agencies; international organizations and foreign agencies; academic institutions; and private persons and entities. The PBO is authorized to make special studies upon request and payment by public or private entities. This subsection also requires that all legal services required by the PBO will be provided by or through the Office of the General Counsel of HHS.

COMMENTARY: Contracts and cooperative agreements with organizations and agencies authorized under subsection (d) would be used to take advantage of expertise available in private and public organizations in order to assure that the PBO's activities are scientifically sound. The special studies authority is similar to authority currently available to the seafood inspection program (as a component of the Department of Commerce) as found in title 15, United States Code, section 1525.

ARRANGEMENTS WITH FDA.

Subsection (e) provides that the PBO may decline to furnish services to the FDA, or to carry out FDA functions, without payment on such terms as the PBO may require, and permits the Commissioner to require reimbursement from the PBO for services, such

as training or administrative support, furnished by other components of the FDA to the PBO.

FEES.

Subsection (f) authorizes the PBO to establish and modify fees for its activities, and allows the PBO to consider direct and overhead costs in setting such fees.

DISCRETION TO REFUSE SERVICES.

Subsection (g) authorizes the PBO to refuse services to any person the PBO has reason to believe has, for example, made unauthorized use of an official mark of approval or otherwise violated laws relating to seafood inspection. (Such violations include affixing an approved mark to a seafood product contrary to applicable regulations or using, without approval of the PBO, words in commerce indicating that the product has been approved, inspected, or otherwise appraised by the PBO.) Services could be reinstated only upon proof that the violative acts cited either did not occur, or had been rectified and were not likely to recur.

COMMENTARY: Consistent with the current practice of NOAA's Seafood Inspection Program, the PBO would refer significant violations of the Federal Food, Drug, and Cosmetic Act, the Lacey Act and the Agricultural Marketing Act to other components of FDA or a United States Attorney for such action as may be appropriate.

PUBLIC INFORMATION AND COMMENTS.

Subsection (h) authorizes the PBO: (1) to inform the public about its programs and services; (2) to conduct (but not to require participation in) surveys to determine the views of persons in the private sector regarding its programs and services; and (3) to request (but not require) the views of its customers concerning its performance.

COMMENTARY: Public information activities will increase consumer understanding of matters such as program purposes and the meaning of official marks. Information obtained from surveys and customer feedback will help the PBO identify and provide the services desired by program participants and the public.

ROUTINE OPERATIONS; INTERNAL PROCEDURES.

Subsection (i) authorizes the PBO, without the approval of the Commissioner, to establish, implement, modify, and repeal internal rules and procedures to govern the manner in which business of the PBO is conducted and the powers granted to it are exercised. Any action under this subsection must be consistent with the requirements of the FDC Act and other applicable law.

SEC. 434. PERFORMANCE AGREEMENT; ANNUAL REPORT.

PERFORMANCE AGREEMENT.

Subsection (a) requires the Secretary and the COO to enter into a performance agreement in order to identify the functions specified in subsections (c) and (d) of section 432 that are to be performed by the PBO and to set organizational and individual performance goals for the COO and the PBO in key operational areas.

ANNUAL REPORT.

Subsection (b) requires the COO to prepare and submit to the Secretary and the Congress an annual management report on the operations of the PBO containing such information as the Director of the Office of Management and Budget shall prescribe.

COMMENTARY: In addition to assessing the PBO's accomplishments with respect to the functions and performance goals specified in the annual agreement under section 434, the annual report will include the results of an independent financial audit; the financial and performance requirements of the Chief Financial Officers Act of 1990 and the Government Performance and Results Act of 1993; and a description of, and related information concerning, personnel systems, to the extent they differ from the personnel rules generally applicable to the civil service.

SEC. 435. MANAGEMENT AND CHIEF OPERATING OFFICER (COO).

APPOINTMENT.

Subsection (a) provides that the PBO will be managed by a COO appointed by the Secretary to a 5-year term. The appointment will be made on the basis of experience and demonstrated ability in management. The Secretary may reappoint the COO to subsequent terms so long as performance is satisfactory. The COO position will not fall under existing career or political appointment systems. The COO will be selected from a pool of highly qualified and experienced managers from either the private or public sector.

COMMENTARY: The COO is to be selected from a pool of highly qualified and experienced managers especially qualified to direct the daily operations of the PBO. It is important that the COO instill a "business perspective" as embodied in the PBO initiative and anticipate and respond to dynamic marketplace conditions -- which affect the level of services provided by the PBO. Therefore, relevant business experience will be carefully considered in selecting a COO.

COMPENSATION.

Subsection (b) provides that the COO will be paid at an annual rate of basic pay not to exceed the maximum rate of the basic pay of the Senior Executive Service (SES),

including any applicable locality-based comparability payment. In addition, the COO may receive a bonus in an amount up to, but not in excess of, 50 percent of the annual rate of basic pay, based on the Secretary's evaluation of the performance of the COO and PBO measured according to the performance agreement. Payment of a bonus may be made to the COO only to the extent that such payment does not cause the COO's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary.

TERMINATION OF APPOINTMENT.

Subsection (c) provides that the President or the Secretary may terminate the appointment of the COO for misconduct or non-satisfactory performance in meeting the goals set forth in the performance agreement.

FINALITY OF TERMINATION OR NON-RENEWAL OF APPOINTMENT.

Subsection (d) provides that a decision of the President or the Secretary not to renew or to terminate the appointment of the COO shall be a final administrative action not subject to review.

SEC. 436. PERSONNEL PROVISIONS

Subsection (a) exempts the PBO from any personnel ceilings relating to the number or grade of its employees.

COMMENTARY: Since an increase in the number of participants in the program would require the PBO to hire additional inspectors, an arbitrary limit on the number of employees that the PBO may hire would seriously hamper the operations of the PBO.

Subsection (b)(1) emphasizes that the flexibilities authorized must conform to provisions of title 5, United States Code, governing merit system principles and prohibited personnel practices, veterans preference, the aggregate limitation on pay, and labor-management relations.

Subsection (c) ensures that the use of the flexibilities provided in the bill will be treated like a demonstration project described in 5 U.S.C. 4703(a), insofar as labor-management relations are concerned. This means that the PBO will not be able to implement certain flexibility provided in this section unless it has the written agreement, providing for the exercise of that flexibility, with the labor organization that is the exclusive representative of the affected employees.

Subsection (d) identifies which flexibilities may be used without prior approval by OPM and which flexibilities require a specific plan to be submitted to OPM for approval.

Subsection (e) makes it clear that the PBO would retain the authority to initiate a demonstration project under chapter 47 of title 5, even if it used any or all of the flexibilities provided elsewhere in the section. The demonstration project authority could be used for alternative reduction-in-force procedures (provided they were consistent with veterans preference), dispute resolution procedures, and ways to reorganize and move employees within organizations.

Subsection (f) permits the PBO to establish a performance management system that both maintains individual accountability and strengthens the PBO's effectiveness in certain specified ways.

Subsection (g) permits the PBO to establish an awards program to recognize organizational, group, and individual achievements. It also allows the PBO to grant a cash award of up to \$25,000 with the approval of the COO.

Subsection (h) provides certain flexibilities for addressing poor performance.

Subsection (i) allows the PBO to establish, subject to criteria to be prescribed by OPM, one or more broad-banded systems covering employees who would otherwise be under the General Schedule.

Subsection (j) permits the PBO to pay its employees who remain subject to the General Schedule (instead of being placed under a broad-banded system) without regard to the 10-step structure of the General Schedule.

Subsection (k) allows the PBO, with advance approval of OPM, to establish one or more alternative job evaluation systems

Subsection (l) allows the PBO, with the advance approval of OPM, to provide for variations from the provisions of title 5, U.S.C., governing grade and pay retention, with respect to employees covered by a broad-banded system or an alternative job evaluation system.

Subsection (m) allows the PBO, with OPM's approval, to provide for variations from the provisions of 5 U.S.C. 5753 and 5754, concerning recruitment and relocation bonuses and retention allowances, respectively.

Subsection (n) allows certain term employees in the PBO to be converted to permanent appointments using internal merit promotion procedures. The conversion must be to a position in the same line of work as a position in which the employee served under a term appointment.

Subsection (o) permits the PBO to establish category rating systems for evaluating job applicants instead of assigning numerical ratings to individual applicants.

Subsection (p) exempts the PBO from the 120-day limit on details.

Subsection (q) allows the PBO to establish a probationary period of up to 3 years for any position if it determines that, because of the nature of the work, a shorter period is insufficient to demonstrate complete proficiency.

Subsection (r) makes clear that no provision affecting staffing relieves the PBO from any obligations under Presidentially directed priority placement programs for surplus and displaced employees, or from any obligations under court orders relating to its employment practices.

SEC. 437. PROCUREMENT FLEXIBILITY.

DEFINITIONS.

Subsection (a) defines several terms and acronyms for the purposes of this section.

FLEXIBLE PROCUREMENT AUTHORITIES.

Subsection (b)(1) provides that, in addition to other procurement procedures available under Federal law, the PBO may use other specified procedures.

COMMENTARY: As a general matter, the PBO would be required to abide by all applicable federal procurement laws and regulations, many of which have been significantly streamlined by the Federal Acquisition Streamlining Act and the Clinger-Cohen Act of 1996. This section permits the PBO, in defined circumstances, to use streamlined alternatives to these general rules.

Subsection (b)(2) permits the PBO to conduct a two-phase competition which will be considered to be a competitive procedure. In the first phase, sources would submit basic information, such as the offerors's qualifications, the proposed conceptual approach, costs likely to be associated with the proposed conceptual approach, past performance information, and such additional information as requested by the contracting officer. A limited number of sources would then be selected to participate in a competition in the second phase in accordance with sections 303A and 303B of the FPASA (41 U.S.C. 253a and 253b).

Subsection (b)(3) permits the PBO to acquire commercial items in accordance with the simplified procedures for purchases of commercial items set forth in the Federal Acquisition Regulation (FAR) without regard to any dollar limitations otherwise

applicable to those purchases and without regard to the expiration of the test of such procedures set forth in section 4202 of the Clinger-Cohen Act.

Subsection (b)(4) provides relief from statutorily specified wait periods when acquiring property or services that do not meet the definition of commercial item in the Office of Federal Procurement Policy Act..

Subsection (b)(5) permits the PBO to use the simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the FAR to procure non-commercial items from small businesses, if specified limits on total value and percentage of contract value are not exceeded. This simplified procedure may not be used for a sole source acquisition or to procure construction.

COMMENTARY: A large pool of highly qualified small business service contractors exists that can compete for service requirements in the price range specified in subsection (b)(5). The combination of simplified procedures (where, among other things, the conduct of discussions, formal evaluation plans and scoring are not required) and competition among small businesses (whose low overhead and favorable wage structures can enable them to offer competitive bids) can result in lower costs to the government and reduce acquisition lead times.

Subsection (c) requires the PBO, in consultation with the Administrator for Federal Procurement Policy, to issue guidance to implement the authorities set forth in the section.

Subsection (d) prohibits any agency from purchasing property or services under contracts entered into or administered by the PBO using the authority in subsection (b) unless approved in advance by the ordering agency's senior procurement official responsible for purchasing.

GENERALLY APPLICABLE PROVISIONS.

Subsection (e) requires the PBO, except as otherwise provided in this section, to comply with all applicable federal laws and regulations concerning procurement, and provides that this section does not waive any civil rights or labor standards laws applicable to federal contracts.

SEC. 438. VOLUNTARY SEAFOOD INSPECTION AND SERVICES ACCOUNT; FINANCING OF THE PBO.

IN GENERAL.

Subsection (a) provides that all funds made available from any source for the operations of the PBO shall be deposited in a Voluntary Seafood Inspection and Services

Account to be established on the books of the Treasury, and shall be available for use by the PBO without fiscal year limitation.

INVESTMENT AUTHORITY.

Subsection (b) authorizes the COO to invest funds in the account in interest-bearing accounts or United States Government debt instruments. (This investment authority parallels the authority currently available with respect to revenues for voluntary seafood inspection under section 203(h) of the AMA of 1946.)

RESTRICTION ON FINANCING.

Subsection (c) prohibits the PBO from using any funds available to the Commissioner except amounts specifically appropriated for use by the PBO; and amounts necessary to reimburse the PBO for carrying out activities assigned by the Commissioner under sections 432(c) and 432(d)(1)(B).

COMMENTARY: The PBO is expected to cover the cost of its operations primarily through fees charged to customers for its services. The Commissioner, however, will reimburse the PBO for conducting activities specified in section 432(c) as provided in this Act.

SEC. 4. CONFORMING AMENDMENTS.

AMENDMENTS TO THE FDC ACT.

This section amends sections 702 and 706 of the FDC Act to permit PBO personnel to be designated to perform inspections under such sections upon agreement between the Commissioner and the COO.

SEC. 5. TRANSITION PROVISIONS.

TRANSFER OF FUNCTIONS.

Subsection (a) transfers from the Secretary of Commerce to the Secretary of HHS, for implementation through the PBO, all authorities and functions under the AMA of 1946 relating to seafood, and any other functions incidental or necessary thereto.

TRANSFER OF PERSONNEL.

Subsection (b) transfers to the PBO all officers and employees of the Seafood Inspection Program of the National Marine Fisheries Service, and such other employees of the Department of Commerce as may be designated by the Secretary of Commerce with concurrence of the Secretary of Health and Human Services.

COMMENTARY: The reference to “other employees” will permit the transfer of Department of Commerce employees who are in organizations outside NOAA’s seafood inspection program but who provide the program with support services in areas such as finance and billing.

TRANSFER OF ASSETS AND LIABILITIES.

Subsection (c) directs the Secretary of Commerce to transfer to the PBO all assets and liabilities of the Department of Commerce pertaining to the functions specified in subsection (a), including facilities, contracts, property, records, accounts payable and receivable, and unexpended and unobligated balances of funds.

CONTINUED EFFECT OF ADMINISTRATIVE ACTIONS.

Subsection (d) specifies that all administrative actions pertaining to seafood executed by the Secretary of Commerce, NOAA, or the NMFS pursuant to the AMA of 1946 and in effect on the day before the effective date of this bill will remain in effect unless and until modified or rescinded under subchapter B of chapter IV of the FDC Act.

SEC. 6. APPROPRIATION OF TRANSITION EXPENSES AND CAPITALIZATION.

This section authorizes appropriations of \$3 million for FY 2000, to be deposited into the Voluntary Seafood Inspection and Services Account identified in section 438 of the FDC Act. These funds would remain available until expended, without fiscal year limitation, for facilitating the conversion of NOAA’s voluntary seafood inspection program to a PBO located at HHS. The funds would also provide a contingency reserve available in the event of funding shortfalls in subsequent periods resulting from costs exceeding, or revenues falling short of, projections. The primary transition cost would be the cost of training PBO inspectors to conduct HACCP inspections meeting FDA requirements.

COMMENTARY: Appropriations were requested in the President’s FY 2000 Budget to ensure that the PBO can be created shortly after enactment of this legislation.

SEC. 7. REPORT.

This section directs the Secretary of HHS to report to the President and the Congress, within five years after the effective date of this bill, on the operation, effectiveness, and costs of the PBO, including any legislative recommendations the Secretary deems necessary.

SEC. 8. EFFECTIVE DATE.

This section provides that the bill will take effect on the later of 90 days after enactment, or October 1, 1999. However, the Secretary may appoint the COO at any time on or after the date of enactment.

